Supreme Court, U.S.
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No. 95-721

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1995

THE REPUBLIC OF THE PHILIPPINES, AND
THE PHILIPPINES PRESIDENTIAL COMMISSION
ON GOOD GOVERNMENT,

Petitioners,

v.

WALTER FULLER AIRCRAFT SALES, INC.,

Respondent.

On Petition For A Writ Of Certiorari To
The United States Court Of Appeals
For The Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

Walter J. Bonner
Counsel of Record

Thomas A. Guidoboni
MICHAELS, WISHNER & BONNER, P.C.
1140 Conn. Ave. N.W., Suite 900
Washington, D.C. 20036
(202) 223-5000
Counsel for Respondent.

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QUESTION PRESENTED

Whether the Fifth Amendment's due process clause was violated where the Petitioners raised as a limitation on damages their interpretation of a contract provision, were permitted to brief and argue their position fully, and to support it through exhibits, affidavits and live testimony, but were ultimately unsuccessful in persuading the District Court and the Circuit Court that they were correct.

RULE 29.6 LISTING

Walter Fuller Aircraft Sales, Inc. is a Texas corporation with no parent companies and only one subsidiary, which is wholly owned.

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STATEMENT OF THE CASE

This case grows out of the sale of an airplane by the Philippines Presidential Commission on Good Government, a part of the executive branch of the government of the Republic of the Philippines, to Walter Fuller Aircraft Sales, Inc. ("Fuller").[1/] The facts leading up to the suit and the early stages of the litigation are fully and accurately set forth at pages 1377 through 1379 of the opinion of the United States Court of Appeals on interlocutory appeal, reported at 965 F.2d 1375 (5th Cir. 1992). This statement of facts is incorporated herein by reference.[2/]

[1/] Both petitioners will be referred to jointly as "the Philippines", and when necessary to separate them, as the "Republic" and the "PGCC".

[2/] The opinion is reproduced as "Appendix E" to the Petition for Writ of Certiorari. The relevant pages of Appendix E are 4 through 16.

However, in order to respond to the arguments advanced by the Philippines, some additional explication is required.

Fuller filed this action against the Philippines for breach of contract, breach of warranty of title, and other relief. Subsequently, a claim for fraud was added. The Philippines moved to dismiss asserting the lack of subject matter jurisdiction. In support of their motion, they relied, inter alia, on Article V(b) of the Deed of Sale, claiming that it limited Fuller's remedy to recovery of the sale price (R. 212). In their Reply in support of the same motion, they repeated this assertion (R. 425). The District Court denied the motion to dismiss and rejected such a cramped construction of the Deed, observing that the "clear language" of the Deed of Sale rendered the Philippines' construction "plain wrong" (R. 481 & n.26).

The Philippines took an immediate appeal to the United States Court of Appeals for the Fifth Circuit, which rendered a decision, affirming in part, and reversing and remanding in part for further factual development on issues related to jurisdiction. See 965 F.2d 1375.[3]/ The Court of Appeals also had no difficulty interpreting Article V(b) of the Deed of Sale, describing the meaning of its language as "obvious[]". 965 F.2d at 1387, App. B to Petition for Writ of Certiorari at 51.

On remand, Fuller filed a motion for partial summary judgment which raised, among other matters, the appropriate

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[3]/ Ultimately the District Court found that it had jurisdiction over both the Republic and the PCGG, see Appendix B to Petition for Writ of Certiorari at 33-37, and no challenge to that finding was raised in the second appeal to the Fifth Circuit or in the Petition for Writ of Certiorari.

measure of damages. Although on notice of this argument, the Philippines elected not to address it, relying instead on the affirmative defense of illegality.[4]/

The District Court granted partial summary judgment, holding that the PGCC had breached its indemnity agreement with Fuller, and went on to opine that:

> As a result of the PCGG's breach of its indemnity agreement, Fuller is entitled to damages in the amount of the market value of the Falcon, as well as all expenses including attorney's fees, incurred as a result of the Faysound Action.

(R. 883-884). The Philippines moved to set aside this grant of partial summary judgment, advancing as one argument, that Article V(b) of the Deed of Sale limited damages to return of the purchase price. This motion was denied.

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[4]/ The District Court properly rejected this "defense" and it was not pursued on appeal to the Fifth Circuit.

Shortly before trial, the Philippines again raised the issue by Motion for Reconsideration/Motion in Limine (R. 1457) which included a factual offer of proof (R. 1469). The motion was opposed, and the Philippines filed both a Reply (R. 1488), and a Supplemental Brief with numerous exhibits (R. Vol. 11). The District Judge heard oral argument on the matter and ruled as follows:

> I did study all of the briefing that was presented on this issue . . . and I'm going to overrule the Defendants' Motion for Reconsideration and overrule the Motion for Admission of Evidence on the interpretation. And as I indicated in prior opinions concerning this, this contract is clear and unambiguous and I'll stand by that ruling after reviewing it once again. . . .

(Tr. I-3, lines 10-17) (emphasis added). The case proceeded to trial before the District Court, sitting without a jury.

As part of their defense, the Philippines called as a witness, Doreteo B. Daguna, the Filipino lawyer for Fuller who had negotiated the sale of the aircraft, and taken part in drafting the Deed of Sale. Daguna was permitted to testify concerning the meaning of the language of Article V(b) of the Deed, and about the drafting of the document, subject to Fuller's hearsay and parol evidence objections. Under similar reservations, the District Court heard testimony from Ismail Sanchez, an attorney who represented the Philippines in the negotiations. After hearing these witnesses' direct testimony, the District Court sustained Fuller's evidentiary objections. Moreover, when making its findings of fact, the District Court discredited the testimony of both. Appendix A to the Petition for Writ of Certiorari at 4-6, 29-30. Specifically as

to Daguna, the Court found that he "lied under oath". Id. at 4-5.

Upon completion of the trial, the District Court entered judgment in favor of Fuller in the amount of $14,928,457.39 for compensatory damages only. No punitive damages were awarded because they are barred by 28 U.S.C. § 1606. (Tr. 110; Appendix B to Petition for Writ of Certiorari at 38-39.)[5]/

On appeal, the United States Court of Appeals for the Fifth Circuit unanimously affirmed the judgment below by brief unpublished opinion, 62 F.3d 396 (1995) (Table), (Appendix A to Petition for Writ

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[5]/ The reference to the Philippines' exposure to punitive damages at page sixteen of the Petition for Writ of Certiorari is a red herring. Fuller originally noted a cross-appeal from the District Court's denial of punitive damages, but the cross-appeal was dismissed on Fuller's motion.

of Certiorari). The Petition for Writ of Certiorari followed.

REASONS FOR DENYING THE WRIT

1. The Philippines assert that they were denied due process of law because the District Court ruled that Article V(b) of the Deed of Sale was unambiguous, without giving them notice and an opportunity to be heard. This contention is belied by reference to the record, which demonstrates that the Philippines had numerous opportunities to present their position on this matter. They briefed the issue extensively on several occasions, filed voluminous exhibits, made oral argument, and were even permitted to offer testimony at trial in support of their contention. The claim that they were denied due process is simply without basis.

The meaning of Article V(b) of the Deed of Sale was raised by the Philippines

themselves in support of their first substantive response to the lawsuit, a Motion to Dismiss for Lack of Jurisdiction. The Philippines argued, inter alia, that there was a lack of jurisdictional connection with the United States, and advanced their interpretation of Article V as a limitation on their obligations to Fuller (R. 212). In reply, they argued the same interpretation in support of their "Act of State" defense (R. 425).

After the District Court ruled against them, holding that the plain language of the contract did not support their interpretation (R. 481), the Philippines renewed the argument on interlocutory appeal to the United States Court of Appeals for the Fifth Circuit. It was again rejected. Walter Fuller Aircraft Sales v. Republic of the Philippines, 965 F.2d 1375, 1387 (5th Cir. 1992). Thus, in

the initial stages of the litigation, the Philippines themselves raised the meaning of Article V(b) of the Deed of Sale before two courts, and lost on both occasions.

Interpretation of Article V(b) was again squarely presented by Fuller's Motion for Partial Summary Judgment, filed shortly after the case was remanded to the District Court. In support of that Motion, Fuller argued that if the District Court were to hold that the Philippines had breached their indemnity agreement, Fuller would be entitled to the full measure of its damages (R. 848). The Philippines elected not to interpose Article V(b) as a limitation on damages, countering instead with the affirmative defense of "illegality". The District Court properly rejected this defense and granted Fuller's Motion, holding that Fuller was entitled to damages in the amount of the market value of the

aircraft, as well as expenses for breach of the indemnity agreement (R. 883-84).

Before trial, the Philippines brought their interpretation of Article V(b) back before the District Court on a Motion for Reconsideration/In Limine (R. 1457) which included an evidentiary offer of proof (R. 1469). After Fuller's Opposition, the Philippines filed both a Reply (R. 1488) and a Supplemental Brief supported by numerous exhibits (R. Vol. 11). The District Court heard oral argument on this Motion prior to trial, and after stating that it had "stud[ied] all of the briefing that was presented on this issue. . . .", again found the Deed of Sale to be "clear and unambiguous," and denied the Motion (T. I- 3).

Despite this ruling, during the trial the District Court received evidence offered by the Philippines from two

witnesses who were involved in the negotiation of the agreement and the drafting of the Deed of Sale. This testimony was taken subject to Fuller's hearsay and parol evidence objections (T. II-204, T. III-6). After hearing the testimony in full, the Court sustained these objections. At the close of the case, it discredited the testimony of both witnesses (T. III-90).

As demonstrated by the foregoing, the Philippines' claim that they were denied due process, is utterly without record support. They had multiple opportunities to address the issue by written and oral argument, and to support their contentions with exhibits, affidavits, and live testimony. The District Court permitted the Philippines every opportunity to persuade it to accept their interpretation of the Deed of Sale. There was no

procedural error, and no violation of due process.

2. Stripped of the constitutional rubric, the Philippines' argument amounts to no more than a claim that the District Court and the United States Court of Appeals misapplied Texas decisional law regarding the interpretation of contracts.

This Court has recognized that:

> The federal judges who deal regularly with questions of state law in their respective districts and circuits are in a better position than we to determine how local courts would dispose of comparable issues.

Butner v. United States, 440 U.S. 48, 58 (1979). In the instant case, a District Judge for the Northern District of Texas, applying Texas decisional law, held that Article V(b) of the Deed of Sale was unambiguous and did not create a limitation on the damages Fuller could recover. A panel of the United States Court of Appeals

for the Fifth Circuit unanimously affirmed this decision. 62 F.3d 396 (1995) (Table) (Appendix A to Petition for Writ of Certiorari).[6]/

Where issues of state law enter into the judgments of federal courts, this Court has been

> . . . hesitant to overrule decisions by federal courts skilled in the law of particular states unless their conclusions are shown to be unreasonable.

Bishop v. Wood, 426 U.S. 341, 346 & n.10 (1976). As demonstrated below, there is no

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[6]/ This panel included two judges from Texas, the Honorable Edith Hollan Jones, and the Honorable Robert M. Parker. Judge Parker served as a United States District Judge for the Eastern District of Texas from April of 1979 until elevation to the Circuit Court in June of 1994. In addition, the panel of the Fifth Circuit which heard the interlocutory appeal and also rejected the Philippines' interpretation of Article V, included two Texas judges as well, one a District Judge from the Southern District of Texas, sitting by designation pursuant to 28 U.S.C. § 292.

reason to depart from this traditional deference in the case at bar because the result reached by the District Court and affirmed by the United States Court of Appeals was not only reasonable, but also correct.

3. The District Court appropriately applied Texas law to conclude that Article V(b) of the Deed of Sale did not limit Fuller's remedies. Article V(b) of the Deed of Sale provides as follows:

> The SELLER [the Philippines] however, does hereby assume full responsibility, to defend and hold harmless the BUYER [Fuller] from any and all claims of all persons whosoever, including but not limited to adverse claims, charges, liens, and/or possible encumbrances that may be place [sic] on the title by reason of any act, contract or agreement entered into, prior to the date of this Deed of Sale, as the SELLER by virtue of this sale, has released subject aircraft absolutely free from any such claims, for if there be should arise, such claims are understood ipso facto directed

> against the proceeds of the sale that is deposited in escrow, and not anymore on the aircraft.

R. Ex 2. The Philippines unsuccessfully urged the Courts below to find this language ambiguous and to read it to limit Fuller's remedy to the recovery of the proceeds of the sale. The District Court found the provision "clear and unambiguous" (T. 1-3) and containing no such limitation. These rulings were correct.

Under Texas law,

> [a] contract is not deemed ambiguous merely because the parties have a disagreement on the correct interpretation.

REO Industries, Inc. v. Natural Gas Pipeline Co., 932 F.2d 447, 453 (5th Cir. 1991). Nor is a contract considered ambiguous because the parties disagree on "whether it is reasonably open to just one interpretation." D.E.W., Inc. v. Local 93 Laborers' International Union, 957 F.2d

196, 199 (5th Cir. 1992). Rather, where a contract is ". . . so worded that it can be given a certain or definite legal meaning or interpretation, then it is not ambiguous." D.E.W., Inc., supra.

Article V(b) meets this test. It includes no language which imposes a limit on Fuller's remedies. The language can only be read as evincing the parties' agreement to treat third party claims against the aircraft as through they were "directed against the proceeds of the sale . . ." and not against the aircraft itself. In other words, it was the parties' intention to consider third party remedies as limited by the law of the Philippines. See R. Ex. 70, para. 20 (Affidavit of PCGG Commissioner DeLeon).

In the absence of ambiguity, the District Court looked to the language of the Deed of Sale itself to determine the

intention of the parties ". . . for it is objective, not subjective, intent that controls." Watkins v. Petro-Search, Inc., 689 F.2d 537, 538 (5th Cir. 1982). Therefore, where a contract is unambiguous, extrinsic evidence of the parties' intent is not admissible. Storm Associates, Inc. v. Texaco, Inc., 645 S.W.2d 579 (Tex. App. San Antonio 1982), aff'd, 691 S.W.2d 586 (Tex. 1985).

In the Courts below, the Philippines sought to turn the Texas law of contract interpretation on its head by offering inadmissible (and incredible) parol evidence, in an attempt to vary the plain language of an agreement, and in order to create an ambiguity where none existed. The District and Circuit Courts appropriately rejected this ploy.

4. Even if the lower courts were wrong in their conclusion that Article V(b)

is unambiguous as a matter of law, such an error would be harmless, and must be disregarded because it does not affect the substantial rights of the parties, 28 U.S.C. § 2111. See McDonough Power Equipment, Inc. v. Greenwood, 464 U.S. 548 (1984). Under Texas law if a contract is found to be ambiguous, its interpretation becomes a question of fact. Fireman's Fund Insurance Co. v. Murchison, 937 F.2d 204, 207 (5th Cir. 1991). In this case the District Judge, sitting as the trier of fact, heard the evidence offered by the Philippines on their interpretation of Article V(b) of the Deed of Sale, and rejected it on credibility and other factual grounds. Appendix A to Petition for Writ of Certiorari at 4-6, 14-16, 29-30.

These findings of fact were affirmed by the Court of Appeals, as they must be

applying Fed. R. Civ. P. 52(a), particularly since determinations based on credibility warrant even "greater deference to the trial court's findings." Anderson v. Bessemer City, 470 U.S. 564, 575 (1985). In these circumstances review by this Court is inappropriate.

> A court of law, such as this Court is, rather than a court for correction of errors in fact finding, cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error.

Graver Tank & Mfg. Co. v. Linde Air Products Co., 336 U.S. 271, 275 (1949). As a factual matter, the District Court's decision turned on the construction of a specific contract, and the credibility of particular witnesses. Its findings were affirmed by the Court of Appeals, and the Philippines have made no showing of any error at all. Review by this Court is

unwarranted. United States v. Johnston, 268 U.S. 220, 227 (1925) (certiorari not granted for purposes of factual review).

CONCLUSION

Wherefore, respondent Walter Fuller Aircraft Sales, Inc. respectfully requests that the Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit be denied.

Respectfully submitted,

Walter J. Bonner
Counsel of Record

Thomas A. Guidoboni
MICHAELS, WISHNER & BONNER, P.C.
1140 Conn. Ave. N.W., Suite 900
Washington, D.C. 20036
(202) 223-5000
Counsel for Respondent.